

## REMARKS

Applicant thanks Examiner Kreck for the analysis contained in the Office Action dated June 28, 2007. In particular, applicant thanks the Examiner for allowing Claims 8–11. Applicant requests entry of a minor amendment to Claim 5. The amendment is not believed to change the scope of the claim, nor should it require additional searching or consideration by the Patent Office. Rather, the amendment merely makes explicit that which was already implicit in the claim and provides further clarity to the claim. Allowance of Claim 5 is requested for the reasons discussed below.

### Claim Rejection Under 35 U.S.C. § 103

Claim 5 currently stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Draper (U.S. Patent No. 214,894) in view of Blendermann (U.S. Patent No. 3,469,698).

The key to the Examiner's analysis is contained in the section "Response to Arguments" where the Examiner states that Blendermann has telescoped sleeves that are "inherently capable of axial movement."

Upon review of the disclosure in Blendermann, it is quite evident that the sleeves in Blendermann are intended to *rotate* relative to one another. Blendermann did not contemplate relative axial movement. There is ample evidence of this in the disclosure. For example, at Col. 4, line 4, Blendermann refers to using "telescoped sleeves 44, 45 one fixed on the top plate of the drain body and the other rotationally shiftable but securable relative thereto to vary the effective flow openings defined by the selected extent of coincidence of similar alignable slots in each." In the context of Blendermann's disclosure, the term "telescoped" refers to its method of construction rather than an ability to shift axially. Otherwise, the term "telescoping" or "expandable" would have been used. According to Oxford Online Dictionary, the definition of the word "telescope" is:

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"To force or drive one into another (or into something else) after the manner of the sliding tubes of a hand-telescope: usually said in reference to railway carriages in a collision. Also fig. to combine, compress, or condense (a number of things) into a more compact or concise form; to combine or conflate (several things, or one thing with another); to shorten by compression."

The term does not inherently mean that the pieces are intended to slide relative to each other. This is reflected by the fact that sleeve 45 is "rotationally shiftable" relative to sleeve 44, with no mention of axial movement. Furthermore, at Col. 4, line 14, Blendermann continues:

"Securing means 48 such as a set screw or a bolt-and-slot connection may be used to clamp the barrier sleeve member in position conveniently selected again by a calibrated scale and index mark, e.g. located on respective top edges of the sleeves."

A bolt-and-slot securing means would clearly be unsuitable for securing sleeves that move both rotationally and axially. Blendermann also provides for a calibrated scale and index mark on respective top edges of the sleeves, which would clearly be useful for determining a proper rotational position, but there is no mention of an axially calibrated scale for determining the proper axial position.

To the extent the Examiner is arguing that the structure of Blendermann is inherently capable of such axial movement, applicant respectfully notes that Blendermann teaches providing slots with a repeated pattern. The slots are staggered vertically as well as radially about the sleeves, such that, as the sleeves are rotated, the slot opening can be adjusted. This pattern also means that if the relative axial position of the sleeves were to be adjusted, which applicant submits would not be done for the reasons presented above, the movement would result in slots being alternately opened and closed as the slots passed over one another. There would not be a linear increase in the flow area through the slots during axial movement. In contrast, the cleanout drain as claimed in the present application allows a user a high degree of control over the size of the flow opening which is not possible based on the teachings of Blendermann – even with the additional movement proposed by the Examiner.

Applicant has amended Claim 5 to emphasize this difference. Claim 5 now refers to "relative axial movement of the first body and the second body adjusting the length of the slot open flow area linearly throughout the limited axial movement of the first body and the second body".

#### CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that the present application is in condition for allowance. Applicant, therefore, requests the early issuance of a Notice of Allowance.

Respectfully submitted,

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